

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HOWARD JOHNSON  
INTERNATIONAL, INC.,

Plaintiff,

v.

85 FIFTH STREET ASSOCIATES LLC, et  
al.,

Defendants.

CASE NO. C04-110JLR

ORDER

HOWARD JOHNSON  
INTERNATIONAL, INC.,

Plaintiff,

v.

85 FIFTH STREET ASSOCIATES LLC, et  
al.,

Defendants.

CASE NO. C04-112JLR

**I. INTRODUCTION**

This matter comes before the court on two motions from Plaintiff Howard Johnson Int'l, Inc. ("HJI"). As to Case No. 04-110 in this consolidated action, HJI moves for partial judgment under Fed. R. Civ. P. 54(b) or in the alternative, voluntary dismissal of

1 its remaining claims (Dkt. # 23). As to Case No. 04-112, HJI seeks summary judgment  
2 establishing Defendants' liability on HJI's claims and dismissing Defendants'  
3 counterclaims (Dkt. # 24). For the reasons stated below, the court DENIES the first  
4 motion and GRANTS the second motion.

## 5 **II. BACKGROUND & ANALYSIS**

6 Defendants in each of the cases before the court are a group of individuals and  
7 entities operating Howard Johnson hotel franchises. Case No. 04-110 pertains to a hotel  
8 in Kent, Washington; Case No. 04-112 pertains to a hotel in Chehalis, Washington. The  
9 two individual Defendants, Lawrence Horowitz and Andre Tatibouet, were principals in  
10 85 Fifth Street Associates, L.P. and are principals in 85 Fifth Street Associates, LLC, its  
11 successor.<sup>1</sup> They are also principals in Defendant Northwest Lodging, Inc.

12 This case is complicated by the bankruptcies of Defendants Horowitz and  
13 Tatibouet. The resultant automatic stay prevents the court from taking any action with  
14 respect to those individuals. The business entity Defendants, however, have not filed for  
15 bankruptcy. HJI requests that the court consider its motions as they apply to those  
16 entities. None of these Defendants have opposed the pending motions, nor could they, as  
17 they have no counsel.

### 18 **A. HJI's Summary Judgment Motion.**

19 The court turns first to HJI's motion for summary judgment on claims relating to  
20 the Kent hotel. As HJI points out, this motion is virtually identical to a motion relating to  
21 the Chehalis hotel that the court granted in part on May 26, 2005 (Dkt. # 22). Unlike the  
22 previous motion, this motion is not complicated by a claim for liability under a  
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27 <sup>1</sup>85 Fifth Street Associates, LLC assumed all obligations of 85 Fifth Street Associates,  
28 L.P. in October 2000. Except where the distinction is important, the court will refer to both  
entities as "85 Fifth Street."

1 Development Agreement. Also, Defendants opposed the previous motion; they do not  
2 oppose this one.

3 Where the non-moving party fails to oppose a summary judgment motion, the  
4 court must still apply the standards of Fed. R. Civ. P. 56. Henry v. Gill Indus., Inc., 983  
5 F.2d 943, 949-50 (9th Cir. 1993) (holding that court may not grant summary judgment  
6 merely because motion is unopposed, even where local rules are to the contrary). The  
7 court must determine if the moving party's papers are sufficient to demonstrate that there  
8 is no genuine issue of material fact and judgment is appropriate as a matter of law. See  
9 id. at 950.

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11 For the reasons stated in its May 26 order, the court finds that there are no genuine  
12 issues of material fact regarding Defendants' liability under the License Agreement  
13 covering the Kent hotel. The court also finds no issues of material fact regarding  
14 Defendants' liability for \$100,000 in liquidated damages and \$57,163.14 for unpaid  
15 royalties under the License Agreement. As to Defendants' counterclaims regarding the  
16 Kent hotel, the court finds that summary judgment is appropriate for the reasons stated in  
17 its May 26 order.

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19 **B. HJI's Request for Partial Judgment Under Rule 54(b).**

20 HJI asks the court to enter partial judgment enforcing the court's May 26 order.  
21 That order addressed HJI's contract claims, and resolved only claims relating to HJI's  
22 License Agreement for the Chehalis hotel. The order also dismissed Defendants'  
23 counterclaims.

24 Under Rule 54(b), the court can enter a "final judgment as to one or more but  
25 fewer than all of the claims" in an action involving multiple claims if it determines "that  
26 there is no just reason for delay." The rule authorizes the court to enter judgments that  
27 dispose of fewer than all of the claims in an action, but that are "final" as to the claims  
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1 that the judgment terminates. The rule thus raises questions of judicial economy, as it  
2 raises the possibility of multiple final judgments, and multiple appeals. See Gausvik v.  
3 Perez, 392 F.3d 1006, 1009 n.2 (9th Cir. 2004) (“[I]n the interest of judicial economy  
4 Rule 54(b) should be used sparingly.”).

5 The court declines to exercise its discretion to grant HJI partial judgment for  
6 several reasons. First, the judgment would fracture this case into ungainly pieces. As to  
7 both the Kent and Chehalis hotel, HJI has brought claims under the Lanham Act. The  
8 court has yet to address those claims, as no motion has been made. Moreover, HJI’s  
9 complaint indicates that it is seeking multiple forms of relief (e.g., unjust enrichment  
10 damages, disgorgement of profits) for its contract claims. The court has not addressed  
11 those remedies. HJI seeks to break this case into multiple appealable pieces, a step the  
12 court will not take absent compelling circumstances. See Gausvik, 392 F.3d at 1009 n.2  
13 (Rule 54(b) “was not meant to displace the ‘historic federal policy against piecemeal  
14 appeals.’”) (quoting Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 438 (1956)).

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16 As an alternative to a partial judgment, HJI has agreed to dismiss its remaining  
17 claims as to the Chehalis hotel. HJI believes this will permit the court to sever the cases  
18 that it consolidated (with HJI’s agreement) only a few months ago, and enter final  
19 judgment as to the Chehalis case. Again, the court declines to take this step, as it would  
20 neither serve judicial economy nor the interests of the parties.

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22 If the sole unadjudicated portion of this action were HJI’s claims against the  
23 bankrupt individual defendants, the court would enter a partial judgment on all of HJI’s  
24 claims against the business entity Defendants.<sup>2</sup> As the matter stands now, however, HJI  
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27 <sup>2</sup>For example, if HJI were willing to dismiss its Lanham Act claims and its alternative  
28 contractual remedies as to both the Kent and Chehalis hotels, the court could enter a partial  
judgment resolving all claims against the business entity Defendants.

1 has pending claims against those entities. The court finds partial judgment (or severing  
2 these cases) to be inappropriate under these circumstances.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the court GRANTS HJI's motion for summary  
5 judgment (Dkt. # 24) and DENIES HJI's motion for partial judgment or severance (Dkt.  
6 # 23). The court notes that this order applies neither to Defendant Horowitz nor  
7 Defendant Tatibouet, as this action is stayed with respect to them as a result of their  
8 bankruptcies.  
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10 Dated this 22nd day of July, 2005.

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14 JAMES L. ROBART  
15 United States District Judge  
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